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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,579	04/02/2001	Alan R. Shealy	051207-1100	6598

7590 08/14/2003

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GREENVILLE, SC 29601

EXAMINER

BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 08/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/828,579

Applicant(s)

SHEALY, ALAN R.

Examiner

Igor Borissov

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 and 11-15 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claims 1-5, these claims are confusing, because they appear to recite the method steps while refer to a system.

As per claims 11-15, they are confusing, because the term "logic" is not descriptive.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 6-10 are rejected under 35 U.S.C. 101 because the claimed method for providing for future rate changes does not recite a limitation in the technological arts. The independently claimed steps of: identifying that a future rate plan is to be changed; selecting the future rate plan desired; and implementing the future rate change, are abstract ideas, which can be performed mentally without interaction of a physical structure. Because the independently claimed invention is directed to an abstract idea which does not recite a limitation in the technological arts, those claims and claims

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depending from them, are not permitted under 35 USC 101 as being related to non-statutory subject matter. However, in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 6, 9, 11, 14, 16 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Ehlers et al. (US 5,924,486).

Ehlers et al. teach a method and system for environmental condition control and energy management, comprising:

As per claims 1, 6, 9, 11, 14, 16 and 19,

identifying that a future rate plan is to be changed (column 11, lines 22 – column 12, line 4; column 27, line 66 – column 28, line 4);

selecting the future rate plan desired (column 11, lines 22 – column 12, line 4; column 27, line 66 – column 28, line 4);

implementing the future rate change (column 11, lines 22 – column 12, line 4; column 27, line 66 – column 28, line 4);

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selecting the effective date of the future rate plan (column 27, line 66 – column 28, line 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5, 7-8, 10, 12-13, 15, 17-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers et al.

As per claims 2, 7, 12 and 17, Ehlers et al. teach said method and system, comprising selecting a desired date and duration of new plan (column 11, lines 22 – column 12, line 4; column 27, line 66 – column 28, line 4).

Ehlers et al. do not specifically teach for determining if the future rate change is a single plan change.

It would have been an obvious matter of design choice to modify Ehlers et al. to include determining if the future rate change is a single plan change, because it appears that the claimed features do not distinguish the invention over similar features in the prior art, and the teachings of Ehlers et al. would perform the invention as claimed by the applicant without said teaching.

As per claims 3, 8, 13 and 18, Ehlers et al. teach said method and system, wherein the consistency of usage rate of the appliances is considered for estimation of future time period rate (column 20, lines 36-50).

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Ehlers et al. do not specifically teach for verifying that the future rate plan is consistent with an old rate plan rate change is the single plan change.

It would have been an obvious matter of design choice to modify Ehlers et al. to include verifying that the future rate plan is consistent with an old rate plan rate change is the single plan change, because it appears that the claimed features do not distinguish the invention over similar features in the prior art, and the teachings of Ehlers et al. would perform the invention as claimed by the applicant either with or without verifying said consistency.

As per claim 4, Ehlers et al. teach said method and system, comprising selecting the effective date of the future rate plan (column 27, line 66 – column 28, line 4).

As per claims 5, 10, 15 and 20, Ehlers et al. teach said method and system, comprising selecting the first day of a next billing cycle (column 11, lines 22 – column 12, line 4; column 27, line 66 – column 28, line 4).

Ehlers et al. do not specifically teach for selecting said day if the future rate change is not a single plan change.

It would have been an obvious matter of design choice to modify Ehlers et al. to include selecting the first day of a next billing cycle if the future rate change is not a single plan change, because it appears that the claimed features do not distinguish the invention over similar features in the prior art, and the teachings of Ehlers et al. would perform the invention as claimed by the applicant weather the future rate change is a single plan change, or not.

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form PTO-892).

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 308-1113.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308- 2702.

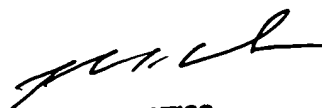
Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks
Washington D.C. 20231***

or faxed to:

(703) 305-7687 [Official communications; including
After Final communications labeled
"Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.



**JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
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